

3050191 – LRB/NDF

ARDC # 6206641

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ONA' M. JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	Case No.:
)	
PANERA, LLC,)	
)	
Defendants.)	
)	
)	

NOTICE OF REMOVAL

NOW COMES the Defendant, PANERA, LLC, by and through its attorneys, Lew R.C. Bricker and Nathaniel D. French of SmithAmundsen LLC, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes this action to the United States District Court for the Northern District of Illinois, Eastern Division, and in support thereof, states as follows:

1. This matter arises from an alleged incident that occurred on October 15, 2019 in the City of Homewood, County of Cook, State of Illinois where the plaintiff alleges that she sustained personal injuries. (*See* Plaintiff's Complaint at Law attached as Exhibit "A.")

2. On October 14, 2021, the plaintiff filed her Complaint at Law for negligence in the Circuit Court of Cook County, Illinois bearing Cook County Case No. 2021 L 010135. (*See* Exhibit A.)

3. The defendant, PANERA, LLC, removes this matter based upon subject matter jurisdiction conferred by diversity of citizenship and amount in controversy, as established in 28 U.S.C. § 1332.

4. PANERA, LLC is the only defendant party to this matter, and, as a result, all of the defendants join in the removal of this matter, as established in 28 U.S.C. §1446.

5. Shown below, diversity of citizenship exists, the defendant asserts a good faith basis that the amount in controversy exceeds \$75,000.00, and removal is timely.

ARGUMENT

Diversity of Citizenship Exists

6. Upon information and belief, the plaintiff, ONA' M. JOHNSON, is currently and was at the time of the alleged incident domiciled in, a citizen of, and a resident of the State of Illinois.

7. At the time of the alleged incident, at the time the Complaint was filed in the Circuit Court of Cook County, and at the present time, the defendant PANERA, LLC, was and is a citizen of the State of Delaware and the State of Missouri. The United States Supreme Court determined that a corporation is a citizen of both (1) every state where it is incorporated, and (2) the state where it has its principal place of business. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).

8. At the time of the alleged incident, at the time the Complaint was filed in the Circuit Court of Cook County, and at the present time, the defendant, PANERA, LLC, was and is organized under the laws of the State of Delaware. (See Affidavit of Julie Immer attached as Exhibit "B" and Printout from Delaware Secretary of State's website attached as Exhibit "C.")

9. The United States Supreme Court stated that a corporation's principal place of business is determined by the "nerve center" test. The Court explained that:

... the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the ...corporation's nerve center. And in practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, i.e., the nerve center, and not simply an office where

the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).

Hertz Corp., 559 U.S. at 92-93. At the time of the alleged subject occurrence, at the time the Complaint was filed in the Circuit Court of Cook County, and at the present time, the defendant, PANERA, LLC maintained its principal place of business in St. Louis, Missouri. (See Exhibit B.) Thus, under the “nerve center” test set forth in *Hertz Corp.*, the defendant PANERA, LLC is a citizen of the State of Missouri.

10. The sole member of PANERA, LLC is PANERA BREAD COMPANY, a Delaware corporation with its principal place of business in St. Louis, Missouri. (See Exhibit B and Printout from Delaware Secretary of State’s website attached as Exhibit “D.”)

11. As such, complete diversity of citizenship exists between the plaintiff, ONA’ M. JOHNSON, and the defendant, PANERA, LLC.

The Amount in Controversy Exceeds \$75,000.00

12. The plaintiff, ONA’ M. JOHNSON, alleges that she sustained “serious, severe and permanent injuries to her body.” (See Exhibit A.)

13. The plaintiff demands judgment against the defendant, PANERA, LLC, for a sum in excess of \$50,000.00 plus the costs of this action. (See SCR 222 Affidavit attached to Exhibit A.)

14. In pre-suit negotiations the plaintiff’s counsel represented that his client had more than \$70,000.00 in medical bills. Further, he made a demand for settlement in the amount of \$250,000.00 permitting the movant to maintain a good faith belief that the amount in controversy exceeds the amount required for removal to federal court based upon diversity jurisdiction.

Removal is Timely Filed

15. This Notice of Removal is filed within thirty (30) days of “the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b).

16. The plaintiff filed her Complaint on October 14, 2021. (*See* Exhibit A.)

17. PANERA, LLC was served with the Summons and Complaint, on November 23, 2021. (The Notice of Service of Process and the Alias Summons served upon Panera, LLC are attached as Exhibit “E.”)

18. As established in this Notice, PANERA, LLC properly filed its Notice of Removal within the applicable thirty-day period. The time-period set forth in §1446 is mandatory and should be strictly construed. *Northern Illinois Gas Co. v. Airco Industrial Gases*, 676 F.2d 270 (7th Cir. 1982). PANERA, LLC has complied with this thirty-day deadline. Therefore, Defendants’ Notice of Removal is timely filed.

19. As required by 28 U.S.C. § 1446(d), the movant will promptly serve upon the plaintiff’s counsel and file with the Cook County Circuit Court a true and correct copy of this Notice.

20. As required by 28 U.S.C. §1446(a), a true and correct copy of all process, pleadings, and orders served upon Defendants in this action is attached hereto. (*See* Exhibit A.)

21. By removing this action, the defendant does not waive any defenses available to it.

22. If any question arises as to the propriety of the removal of this action, the movant requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

23. This Notice is signed and submitted in compliance with Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, the Defendant, PANERA, LLC, by its attorneys, SmithAmundsen LLC, pray that this Honorable Court retain jurisdiction of this matter pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. The Defendant, PANERA, LLC, further prays for further and other relief, as this Court deems appropriate and just.

Respectfully submitted,

/s/ Lew R.C. Bricker

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CERTIFICATE OF SERVICE

The undersigned certifies that on the **20th day of December**, he served a copy of **Notice of Removal** via email to the e-mail addresses set forth below before 5:00 p.m. on:

David H. Robertson, Jr.
Robertson & Wall
670 North Clark St., Suite 300
Chicago, IL 60654
dave@robertsonwall.com

[x] Pursuant to 28 USC Section 1746(2),
I certify under penalty of perjury that
the foregoing is true and correct.
Executed on: December 20, 2021

/s/ Lew R.C. Bricker

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